

RECEIVED

DEC 17 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In re Applications of) MM DOCKET NO. 93-75
)
TRINITY BROADCASTING OF)
FLORIDA, INC.) File No. BRCT-911001LY
)
For Renewal of License of)
Station WHFT(TV) (Channel 45),)
Miami, Florida)
)
GLENDALE BROADCASTING COMPANY) File No. BPCT-911227KE
)
For a Construction Permit for)
a New TV Station on Channel 45)
at Miami, Florida)

To: The Commission

DOCKET FILE COPY ORIGINAL

MASS MEDIA BUREAU'S OPPOSITION TO
PETITION OF COLBY MAY FOR LEAVE TO INTERVENE, TO
FILE COMMENTS, AND TO PARTICIPATE IN ORAL ARGUMENT

1. On November 15, 1996, Colby May ("May") filed a petition for leave to intervene. May seeks to file comments and to participate in oral argument. On November 21, 1996, Glendale Broadcasting Company ("Glendale") filed a consent motion for extension of time in order to extend the response date to May's petition to December 17, 1996. The Mass Media Bureau hereby submits its opposition to May's petition.¹

¹ At this time, the Bureau sees no need to comment, except as noted below, on the comments filed by May in response to the Mass Media Bureau's October 25, 1996, opposition to Trinity's motion to vacate the record. May, as well as Trinity and NMTV in their December 5, 1996, reply comments, claim that the Bureau erred in contending that the word "control" does not appear in the discussion or rules for the awarding of low power television ("LPTV") preferences. May Comments at pp. 33-34. That *Second Report and Order* does contain the word "control" in the introduction and overview portion where the Commission observed that the preference scheme to be adopted was essentially the same as that described in the then new lottery statute's *Conference Report* and in the *Second Notice of Proposed Rulemaking*. Random Selection Lotteries, 93 FCC 2d

2. May seeks to intervene in this proceeding on the ground that the Bureau, in pleadings filed subsequent to the Initial Decision ("I.D."),² has accused May of giving "incredible advice" to his clients -- Trinity Broadcasting Christian Center of Santa Ana, Inc. d/b/a Trinity Broadcasting Network ("Trinity") and National Minority T.V., Inc. ("NMTV") -- and thereby to have exhibited a "lack of candor" with the Commission. May also contends that the Bureau "is fastening on Mr. May's advice as a reason to find Trinity unqualified." Given the supposed nature and timing of the Bureau's charges, May submits he meets the standards for intervention set forth in Section 1.223(c) of the Commission's Rules.

3. Section 1.223(c) of the Commission's Rules states that any person seeking to intervene later than 30 days after publication of the Hearing Designation Order ("HDO") in the Federal Register shall, *inter alia*: 1) show how his participation will assist the Commission in the determination of the issues in question, and 2) set forth reasons why it was not possible to file a petition within the prescribed time. See also, Las Americas Communications, Inc., 7 FCC Rcd 2625 (1992). The Bureau submits that May has failed to meet those standards.

952, 953 (1983). However, when the preference scheme was actually *discussed* on pp. 973-77, the word "control" does not appear except in a footnote discussing treatment of spousal relationships. See 93 FCC 2d at 977 n. 36. Moreover, the rules governing preferences do not contain the word "control." 93 FCC 2d at 1006-1008.

In any event, the point to be made was that, an LPTV applicant determining whether to claim a minority preference could have concluded that the Commission's apparent focus was on mere ownership, irrespective of whether the minority owners (as opposed to the non-minority owners) actually controlled the applicant. On the other hand, no reasonable applicant could have concluded that the Commission would allow the non-minority owners, as opposed to the minority owners, to control a full power station that was supposed to be "minority controlled."

² Trinity Broadcasting of Florida, Inc., 10 FCC Rcd 12020 (ALJ 1995).

4. First, May does not show how his participation as a party will assist the Commission's resolution of the issues against Trinity. In this regard, May has already testified at length about his role in the preparation and filing of NMTV applications. In so doing, May has described his legal and factual research, thought process and advice, and he was extensively cross examined as to what he did and why he did it. Based on that testimony, Trinity has already advanced virtually every argument May now wishes to advance. In short, May's participation as a party will do nothing but add to the plethora of parties and paper already present in this proceeding

5. Second, the reasons advanced by May to justify intervention at this stage of the proceeding are unpersuasive. While May certainly has an interest in defending his reputation, that interest is no more implicated now than it has been throughout this proceeding. In this regard, the most significant issue specified against Trinity -- the abuse of process issue -- raised questions about May given his role as the attorney who prepared and filed most of NMTV's applications. In exploring that role, Glendale deposed May. In seeking to justify its actions, Trinity called May as a witness, and he testified extensively on the abuse of process issue. After considering all of the evidence, the Bureau observed more than two years ago that the reality of the Trinity/NMTV relationship was known to May and that May's advice (that NMTV could purchase the Odessa television construction permit) was "dubious on its face." Bureau Proposed Findings of Fact and Conclusions of Law (PFCs) at ¶¶ 302-03. The Bureau subsequently observed that abuse occurred because of a "gross misreading of the multiple ownership rules," and argued that "Trinity did not follow the law because it [read

May] never seriously looked to see what the law required." Bureau Reply PFCs at ¶¶ 10 and 34. While the I.D. did not directly accuse May of wrongdoing, it concluded that May's firm treated NMTV as a Trinity subsidiary, and it rejected Trinity's claim that it relied on May's advice. I.D. at ¶¶ 322 and 332. In view of the above, it is clear that, contrary to May's claim, questions regarding the propriety of his actions were raised by the Bureau (by the Commission and by the Administrative Law Judge) well before the filing of the Bureau's February 1996 Replies to Exceptions. In any event, the record now before the Commission on the abuse of process issue is complete, and any decision concerning Trinity will, of necessity, affect May as well.

6. Accordingly, the Bureau opposes May's petition for leave to intervene.

Respectfully submitted,

Roy J. Stewart
Chief, Mass Media Bureau

Norman Goldstein
Chief, Complaints/Political Programming Branch

James W. Shook
Attorney
Mass Media Bureau

Federal Communications Commission
2025 M Street, N.W., Suite 7212
Washington, D.C. 20554
(202) 418-1430

December 17, 1996

CERTIFICATE OF SERVICE

I, Natalie Moses, a secretary in the Complaints/Political Programming Branch, Mass Media Bureau, certify that I have, on this 17th day of December 1996, sent by regular United States mail or delivered by hand, copies of the foregoing, "Mass Media Bureau's Opposition to Petition of Colby May for Leave to Intervene, to File Comments, and to participate in Oral Argument" to:

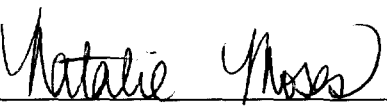
Howard A. Topel, Esq.
Mullin, Rhyne, Emmons & Topel
1225 Connecticut Avenue, N.W., Suite 300
Washington, D.C. 20036-2604

Kathryn R. Schmeltzer, Esq.
Fisher, Wayland, Cooper, Leader & Zaragoza
2001 Pennsylvania Avenue, N.W., Suite 400
Washington, D.C. 20006-1851

David E. Honig, Esq.
3636 16th Street, N.W., Suite B-366
Washington, D.C. 20010

Gene A. Bechtel, Esq.
Bechtel & Cole, Chartered
1901 L Street, N.W., Suite 250
Washington, D.C. 20036

Timothy B. Dyk, Esq.
Barbara McDowell, Esq.
Eric Grant, Esq.
Jones, Day, Reavis & Pogue
Metropolitan Square, 1450 G Street, N.W.
Washington, D.C. 20005



Natalie Moses